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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/765,533	01/19/2001	Helen Hardman Howlett-Campanella	HOWLETT-38283	1419

7590 05/14/2003

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EXAMINER

AMERSON, LORI BAKER

ART UNIT	PAPER NUMBER
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3764

DATE MAILED: 05/14/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/765,533

Applicant(s)

HOWLETT-CAMPANELLA, HELEN
HARDMAN

Examiner

Lori Baker Amerson

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 12 December 2002 is: a) ☐ approved b) ☒ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

Supplemental Action

1. The amendment filed 12/12/02 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: markers 54, 56 and 58. Applicant is required to cancel the new matter in the reply to this Office Action.
2. Applicants' request for a declaring interference has been denied due to the fact that interference cannot be declared unless all claims of an application are in condition for allowance. Applicant's arguments with respect to claims 1-22 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claim 23 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. A plurality of markers 54, 56 and 58 (line 16) are not described in the specification nor the subject matter pertaining to the plurality of rectangles separated into six non-overlapping sets in line 12-13.

Art Unit: 3764

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. Claims ^{1, 3-23}~~1-23~~ are rejected under 35 U.S.C. 103(a) as being unpatentable over Dionne et al [5645494]. As to claims 1, 3, 11, and 18, Dionne discloses a mat (figure 1) having an upper surface (24) and a lower surface (20) and a symmetrical body placement guide (30) on the upper surface of the mat; a patterned design (col. 3, lines 66-67 thru col. 4, lines 1-22) defining a longitudinal axis substantially extending the length of and bisecting the upper surface and having a transverse axis bisecting the longitudinal axis and indicia comprising a line (40) positioned on the longitudinal axis at forty-five degree angles (figures 1, 3a-4b and 6-8); four equal quadrants (col. 4, line 23) defined by the longitudinal and transverse axes where the quadrants are adjacent and are a mirror image of adjoining adjacent quadrants (figures 1, 3a-4b and 6-8).

As to claims 2, 4, 5, 11, 18 and 19, Dionne discloses a patterned design (30) includes indicia comprising a line (40) positioned from the longitudinal and transverse axis at forty-five degree angles (figures 1, 3a-4b, 6-8).

As to claims 6-7, 13-14 and 20-21, Dionne discloses the design having multiple segments of equal areas parallel to the transverse and longitudinal axis (col. 4, lines 14-67; figures 1, 3a-4b, 6-8).

As to claims 8-9 and 15-16 and 22, the design includes indicia created by intersecting lines (figures 1, 3a-4b, 6-8) within each quadrant.

As to claims 10 and 17, the mat has a rectangular configuration (figure 8). Dionne does not disclose the mat configured to aid a yoga practitioner to properly align the practitioner's body during yoga postures. It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

As to claim 23, as best understood by the examiner, Dionne teaches a mat having a flat structure with an upper and lower surface and a longitudinal axis (42); a first center line positioned upon the upper surface and a second center line positioned upon the upper surface parallel to the longitudinal axis and orthogonal with respect to the first center line (see examiner annotation in fig. 1); a plurality of first lines parallel to the first center line and a plurality of second lines parallel to the second center line where the lines provide a plurality of rectangles on the mat (see examiner annotation in fig. 1); the rectangles are separated into four quadrants each having a center point (at a point where the lines intersect); a plurality of markers (25) located on selected intersections of the second lines with the first line and at each center point of each of the quadrants. Dionne discloses all of the limitations of the claimed subject matter except for the rectangles being separated into six non-overlapping sets. A change in the shape of a prior art device is a design consideration within the skill of the art. In re Dailey, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

Art Unit: 3764

Conclusion

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lori Baker Amerson whose telephone number is (703) 306-5576. The examiner can normally be reached on Monday thru Friday from 8-5 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on 703-308-2698. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-5648.

Lba
April 21, 2003



**NICHOLAS D. LUCCHESI
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